



Nez Perce

TRIBAL EXECUTIVE COMMITTEE

P.O. BOX 305 • LAPWAI, IDAHO 83540 • (208) 843-2253

Marlene H Dortch, Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

May 21, 2015

RE: Nez Perce Tribe Reply Comments

REQUEST FOR FURTHER COMMENT ON ISSUES RELATED TO COMPETITIVE BIDDING
PROCEEDING- UPDATING PART 1 COMPETITIVE BIDDING RULES (WT Docket 14-170; GN
Docket 12-268; RM 11-11395; WT Docket 05-211)

Dear Secretary Dortch,

The Nez Perce has been deploying tribally owned and operated fixed wireless broadband infrastructure since 2008. We recognize the importance of providing broadband telecommunications to serve our members, for public safety, healthcare and education. We have reached out to form collaborative partnerships with mobile carriers who utilize our backbone for data/voice transport. To date, there has not been an opportunity to participate in a spectrum auction; however, the Nez Perce Tribe continues to seek opportunity to secure spectrum that would enhance its capacity as a telecommunications provider on the Nez Perce Reservation. The Nez Perce Tribe is committed to meet the communications needs of those living on and adjacent to the Nez Perce Reservation.

The following are reply comments regarding the Federal Communication Commission Request for further comment on issues related to competitive bidding rules- Updating Part 1 Competitive bidding rules.

The Public Notice Requesting further comment on issues related to updating competitive bidding rules, in particular seeks comments on "... how the Commission can meet our statutory obligation to ensure that small businesses, rural telephone companies and businesses owned by members of minority groups and women (collectively, "designated entities" or "DEs")... have an opportunity to participate in the provision of spectrum based services,...". We have compiled the following provision statements we believe are pertinent to the discussion of applicable rules regarding Native American Tribes, Alaska Native Corporations and Native Hawaiians.

47 CFR Section 1.2110(c)(3) provides that "...a business owned by members of minority groups and/or women is one which minorities and/or women who are US citizens control the applicant, have at least greater than 50 percent equity ownership and, in the case of a corporate applicant, have a greater than 50 percent voting interest. For applicants that are partnerships, every general partner must be either minority and/or woman (or minorities and/or women) who are US

citizens and who individually or together own at least 50 percent of the partnership equity, or an entity that is 100 percent owned and controlled by minorities and/or women who are US citizens... The term minority includes individuals of Black or Alaska Native, Hispanic or Latino, American Indian or Alaska Native, and Native Hawaiian or Pacific Islander extraction."

Amendment of Part 1 of the Commission's Rules – Competitive Bidding Procedures, FCC 97-413, ¶ 27 & 28 (December 31, 1997) where the Commission adopts a uniform definition of the term "affiliate" for all future auctions. Where "...the term "affiliate" is defined as an individual or entity that directly or indirectly controls or has the power to control the applicant; is directly or indirectly controlled by the applicant; is directly or indirectly controlled by a third person(s) that also controls or has the power to control the applicant; or has an identity of interest" with the applicant... to ensure that businesses seeking small business status are truly small."

The Commission agreed "...that entities owned and controlled by Indian Tribes and Alaska Regional or Village Corporations should be eligible to bid in future auctions as small businesses, notwithstanding their affiliation with other entities owned by tribes or Alaska Native Corporations whose gross revenues cause the combined average gross revenues of the entity and its affiliates to exceed the general limits for eligibility for bidding as such a business...this exception will ensure that these entities will have a meaningful opportunity to participate in spectrum-based services from which they would otherwise be precluded. Furthermore we do not believe that this exemption for the specified entities will entitle them to an unfair advantage over entities that are otherwise eligible for small business status."

The Nez Perce Tribe encourages the Commission to retain its definition of DE's and sustain its well established and rooted policies designed to bolster a tribe's resources to deploy wireless services on their land to serve the communication needs of their population. Across Indian Country there are significant barriers to entry into the telecommunications service sector. For many Native American tribes, Alaska Native Corporations and Native Hawaiian populations, the lack of access to capital alone limits their ability to build broadband telecommunications infrastructure. Collaborative relationships with private sector providers can offer a pivotal doorway to entry for Indian Country to establish a presence in the telecommunications sector. Collaborative ventures between tribes (DE's) and private providers should be encouraged as a mechanism to facilitate tribal telecommunication deployments. The DE bidding credit offers an opportunity and is a valuable tool for Tribes to participate in the spectrum auction process.

We encourage the Commission to further evaluate the actual end use of spectrum acquired through bidding credits and to reduce the abuse of spectrum flipping; the incentive provided by the DE bidding credit across Indian Country should include a requirement that the communication systems are actually built and serving the population base. The Commission should adopt a three (3) year deployment timeframe to reduce scenarios of unjust enrichment; and consider a deploy or forfeiture requirement where the licensure acquired through the use of DE bidding credits can only be sold to the entity whose DE eligibility was used to secure the credits. We believe these measures would reduce fraudulent use of DE bidding credit and expand the capacity of individual tribes to develop sustainable communications delivery systems.

The best potential collaborative partners for Indian Country are the rural/regional based mobile carriers. We are supportive of the adoption of a Rural Telco Bidding Credit, however the Commission should consider limitations to offering such a credit. Only applicable auctions that serve the needs of and in collaboration with Native American Tribes or other specified eligible DE entities should be eligible for this credit.

The opportunity for secondary market access, rural partitioning, and joint bidding are each positive mechanisms to provide opportunity for DE access to spectrum. As the Commission considers modifications, we encourage it to consider factors in each opportunity that will best serve the communication needs in the more rural and remote areas typical to Indian Country. For each of these opportunities, prioritization and guidelines that would facilitate utilization of low-band spectrum, as it presents the greatest penetration capacity in remote and challenging terrain, would better serve Indian Country.

The Nez Perce Tribe appreciates the opportunity to submit its Reply Comments to the Federal Communication Commission regarding Public Notice 15-49. We encourage the Commission to work diligently to strengthen the ability of Tribes' access to spectrum through its rulemaking. Feel free to contact our Department of Technology Services Manager, Danae Wilson danaew@nezperce.org to learn more about our telecommunications capacity or if you have questions.

Respectfully,

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Anthony Johnson, Chairman

A handwritten signature in blue ink, appearing to be "Mary Jane Miles", written over a horizontal line.

Mary Jane Miles, Secretary